IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
v.	§	**CRIMINAL NO. EP-16-CR-02056-PRM**
	§	
DIMAS JUAN ANTONIO	§	
RODRIGUEZ-GONZALEZ,	§	
	§	
Defendant.	§	

GOVERNMENT'S RESPONSE TO DEFENDANT'S AMENDED NOTICE OF GROUNDS FOR VARIANCE REQUEST

Comes now the United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned United States Attorney, and files its response to Defendant's Amended Notice of Grounds for Variance Request and would respectfully show the Court as follows:

Defendant's Variance Request

The Defendant seeks a variance from the recommended advisory Guideline range and advances two general reasons in support of that variance.[1] The first is the history and characteristics of the Defendant and consists of cultural assimilation, injuries sustained during the present reentry, entry out of a desire to reunite with family in the United States, a "…four-level upward adjustment based on a single, non-violent theft offense…" and two criminal history points assigned for driving without a valid license. As a second ground, the Defendant points

1 As a preliminary matter, it does not appear that Defendant is contesting the adjustments, calculations, and criminal history points as determined by the probation officer.

to the nature and circumstances of the offense, advancing the argument that the instant offense is a non-violent offense; and that Defendant's prior sentence for illegal re-entry was six months and the recommended sentence for the instant offense is at a minimum five times greater, that there is a revocation sentence that "…substantially increases potential sentence exposure for a single act of misconduct by adding 2 criminal history points in addition to possible revocation sentence."

Cultural assimilation is a permissible basis for a downward departure. *United States v. Rodriguez-Montelongo*, 263 F.3d 429, 433 (5th Cir. 2001). A district court needs to consider whether a defendant's circumstances are so atypical or extraordinary so as to warrant a downward departure on the basis of cultural assimilation. *Id.* at 434. In the instant case, the Defendant has an extensive criminal history that spans a period from Defendant's youth to the present day. It is the view expressed by a least one jurist that "…an alien who repeatedly breaks the law…has not been culturally assimilated and should not be given a downward departure…even though he might otherwise meet the criteria for cultural assimilation." *United States v. Castillo*, 386 F.3d 632, 639 (5th Cir.) (Pickering, J., dissenting), *cert. denied*, 543 U.S. 1029 (2004); *see also*, *Flores-Diaz v. U.S.*, 516 F.Supp.2d 818, 828 (S.D.Tex. 2007). Similarly, through his criminal conduct, the Defendant in the instant case has evidenced a failure to culturally assimilate and should not be granted a variance on that basis.

The injury he claims to have sustained during his illegal entry is being treated and does not appear to be of a permanent nature. The desire to reunite with family in the United States occurs in almost every case where an illegal alien reenters the United States. As such, neither of the two preceding reasons justify a variance. Nor should the court grant a variance on the basis that Defendant received a four level adjustment for a prior felony conviction or for the two criminal history points assessed for driving without a license. As noted before, these are properly calculated adjustments and points. In particular, the criminal history points are the result of repeated violations of the law requiring a valid license to operate a motor vehicle.

The other ground advanced for a variance, i.e. the nature and circumstances of the offense do not support the request. The Guidelines consider the nature and circumstances of the offense in determining the base offense level and any adjustments. In addition, criminal history points are assessed on the length of sentence a defendant received for his prior convictions. The Defendant in the instant case was placed in a particular total offense level and criminal history category because he is a recidivist. The Defendant continues to engage in criminal activity and accordingly the recommended sentencing range has increased from the previous time he was before a court. The pending possible revocation is a result of Defendant's continued disregard for the law. None of the reasons advanced by Defendant supports a variance from the recommended Guideline sentence.

WHEREFORE, PREMISES CONSIDERED, the Government respectfully requests that the Defendant's Amended Notice of Grounds for Variance Request be denied in its entirety.

Respectfully submitted,

RICHARD L. DURBIN, JR.
UNITED STATES ATTORNEY

By: ___/s/________________________

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CERTIFICATE OF SERVICE

This is to certify that on April 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Michael Gorman
Attorney for Defendant

___/s/___________________
CARLOS G. HERMOSILLO
Assistant U.S. Attorney